IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07/02/2004

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THE HONOURABLE MR. JUSTICE N.KANNADASAN

WRIT PETITION No.34553 of 2003
and
WPMP No.1233 of 2004

K.C.Palanisamy,
M/s.United Builders Consultants,
78,Arts College Road,
Coimbatore-641 018. .. Petitioner

-Vs-

The Registrar of Firms,
Coimbatore-641 018. .. Respondent

Writ petition filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus, calling for the records connected with the order of the respondent dated 10.9 .2003 in No.15134/212/2003, quash the same and consequently direct the respondent to consider the representation dated 14.7.2003 in accordance with law.

!For Petitioner : Ms.Elizabeth Seshadri for
Iyer and Thomas

^For Respondent : Ms.N.G.Kalaiselvi,
Special Govt. Pleader.

:ORDER

By consent of parties, the writ petition itself is taken for final hearing.

2. The petitioner is the Managing Partner of a registered firm by name M/s.United Builders Consultants (hereinafter referred to as the firm). He has been carrying on the business of promoters of real estate properties for past 15 years. Initially, the partners of the firm intended to register the firm as a Company under the provisions of The Companies Act, 1956. It appears that an agreement has been entered into by the partners for

such conversion. On 24.7.2002, the partners of the firm had applied to the Registrar of Companies, Coimbatore, for registering the firm as a Company under the name and style of United Hi-Tech Builders (Coimbatore) Private Limited. However, the partners were informed that they were entitled to get the existing name of the firm with just the words 'Private Limited' added to it. They were further informed that in the event of incorporation of the Company under a changed name they must take steps to change the name of the firm. Under the said circumstances, the firm intended to register a change in the name of the partnership firm and necessary application was submitted before the Registrar of firms. It is further contended that on 19.11.2002, the petitioner inadvertently filed Form-V prescribed under the Partnership Act, 1932 (hereinafter called as the "Act") instead of furnishing the particulars of the change of name of the firm, it was wrongly stated therein that "the firm United Builders Consultants has been dissolved with effect from 31.03.2002". On the above basis, the respondent has made an entry in the register of firms that the firm was dissolved.

3. The petitioner has realised the mistake later on and sent a letter dated 14.7.2003 signed by all the seven partners of the firm accompanied by an affidavit and requested the respondent to make necessary correction on the ground that the above mistake was bonafide. The partners of the firm have prayed for a rectification of register of firms by removing the entry relating to dissolution of the firm by invoking the powers conferred upon the registrar under Section 64 of The Partnership Act, 1932. The respondent by the impugned communication dated 10.9.2003 has rejected the request of the petitioner, which is challenged in the above writ petition.

4. The learned Special Government Pleader, Mrs.N.G.Kalaiselvi contended that the respondent has not committed any mistake and on the other hand, he has acted upon in terms of the provisions of The Partnership Act, 1932. Inasmuch as the petitioner has submitted an application under Form-V by furnishing the details as contained therein, the respondent is left with no other option but to delete its name from the register of firms.

5. I have considered the rival contentions of the parties.

6. The counsel for the petitioner has submitted that inasmuch as a power is available to the respondent under Section 64 of the Act, the respondent ought to have exercised its discretion on receipt of a representation alongwith the supporting materials, more particularly, the affidavit signed by all the partners. There is nothing on record to suggest that the partners of the firm are having any dispute among themselves and the mistake was purely due to inadvertence. In fact, Rule 7-A of the Tamil Nadu Partnership (Registration of Firms) Rules, 1951 empowers the respondent to make such enquiries or investigation, in case of any pending dispute. In the instant case, even though no dispute is pending and the respondent is armed with the power, by virtue of the Rule 7-A of the Rules, it has not exercised its discretion which causes very serious loss to the business of the firm. Learned counsel has also relied upon the judgment of the Division Bench of the Calcutta High Court in Durga Prosad vs. Registrar of Firms, West Bengal (AIR 1966 CALCUTTA 573). By placing reliance on the said judgment, the counsel

prays that the impugned order is liable to be set aside and the petitioner is entitled to succeed in the writ petition.

7. A perusal of the judgment relied upon by the counsel for the petitioner discloses that on similar circumstances, when the Registrar has failed to exercise his discretion under Section 64 of the Act, the High Court has granted the relief to the petitioner therein. In the said decision, the Division Bench has gone into the question as to whether a positive direction can be granted in cases wherever the discretion was not exercised by the Registrar in accordance with the Act and Rules. It is useful to refer to the relevant paragraphs of the said judgment for the purpose of convenience and reference:

"13. The Rule 8 provides:

"The Registrar may in his discretion institute such enquiries or make such investigation in respect of any matter as may in his opinion be necessary for the proper performance of his duties and administration of the Act, especially when a dispute arises amongst the several partners of a firm. The Registrar may in his discretion call upon any of the partners or all of them to produce any original deed, document or such other evidence as he thinks fit". This Rule appears to indicate that a discretion is given to the Registrar to make enquiries. It also makes it clear that in enquiring the Registrar acts in quasijudicial manner in the sense that he should call for the original deeds and documents or other evidence as he thinks fit. The Registrar did nothing of the kind in this case. He did nothing at the stage before he made the impugned entry "dissolved" nor did he make the enquiries when he was called upon by the appellant to rectify his mistakes. He has powers under Rule 8 which not only are powers to be exercised in his own discretion but are powers to make such enquiries or such investigation as he may in his discretion think necessary for the proper performance of his duty and in the administration of the Act and especially when the dispute is among the several partners. That test is more than satisfied here on the ground of proper administration of the Act, dispute among partners and not to contradict his own Register and the other entries contained therein. He should have called for an investigation. He did not.

14. It is no wonder that the Registrar did not appear to answer the Rule issued by this Court. The Rule was directed against the Registrar of Firms as a respondent in this application to answer the Rule and show cause to explain his order or his action. Mr.Ginwalla appearing for respondent Manickchand in this state of affairs was rather embarrassed to defend the conduct of the Registrar but suggested some kind of comparison with the Registrar of Trade Marks under the Trade Marks Act who need not appear in the proceedings against the order of the Registrar of Trade Mark. The analogy is inapplicable. This is not a proceeding against the Registrar of Trade Mark under the Trade Marks Act. Here this is a proceeding under Article 226 of the Constitution where the Registrar of Firms was made a party respondent and a Rule was issued upon him to show cause. Therefore, it was incumbent upon him to appear and explain his conduct and his action. It is all the more necessary for the Registrar to appear and help the Court in this proceeding having regard to Section 65 of the Indian Partnership Act which expressly provides:

"A Court deciding any matter relating to a registered firm may

direct that the Registrar shall make any amendment in the entry of the Register of Firms relating to such Firm which is consequential upon its decision; and the Registrar shall amend the entry accordingly.
For these reasons, the Rule must be made absolute in terms of prayer (a) of the petition".

8. A perusal of the above paragraphs makes it clear that inasmuch as in a given case when the Registrar has failed to exercise the statutory duty, the Court is entitled to grant a positive direction. A perusal of the impugned order discloses that the respondent has not adduced any reasons as to why the representation of the firm is rejected. The impugned order also does not disclose as to why the Registrar has not exercised the powers under Section 64 of the Act. In view of the fact that the Division Bench of the Calcutta High Court has allowed the writ petition on identical facts and circumstances, I am also inclined to grant relief to the petitioner.

9. For the reasons stated above, the impugned order of the respondent is quashed and the respondent is directed to consider the representation of the petitioner dated 14.7.2003 in terms of Section 64 of the Act and necessary orders may be passed by removing the entry relating to the dissolution of the firm. The above exercise shall be completed within a period of two weeks from the date of receipt of a copy of this order. The Rule is made absolute. No costs. Consequently, connected WPMP is closed.

Index : Yes
Internet : Yes
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To

The Registrar of Firms,
Coimbatore-641 018.

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